

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE DISCO BISCUITS

Plaintiff,

Docket No. 07 CV 5909
Hon. Naomi Reice Buchwald

vs.

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION
TO WITHDRAW AS COUNSEL**

SUNSET RECORDS GROUP, INC., DON
LICHTERMAN, JOHN DOE 1 and JOHN DOE 2

Defendants.

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I. STATEMENT OF FACT

The claims in this matter are based upon copyright infringement and breach of contract arising from the defendants' alleged sale of plaintiff's sound recordings.

On August 15, 2007, Michael Ritigstein became the current attorney of record for defendants, Sunset Holdings, LLC (improperly captioned "Sunset Records Group, Inc.") (hereinafter "SRG") and Don Lichterman, in the above-captioned action, when he filed an Answer on their behalf. On September 17, 2007, an initial case management conference was held before Judge Buchwald at which time she instructed plaintiff's to propound discovery requests upon defendants. On October 9, 2007, discovery requests were received from defense counsel and were answered in a timely manner. Thereafter, a settlement conference was ordered between the parties and was scheduled on January 11, 2008. Between the time the Complaint was answered and the time of the settlement conference, defendant, Don Lichterman and attorney, Michael Ritigstein had several meetings regarding the instant litigation.

After the settlement conference, counsel and defendant, Don Lichterman, discussed the management and direction of the litigation. At such time, Defendant informed counsel of irreconcilable differences over

issues arising out of the management and direction of the litigation. As a result, defendant and counsel agreed that they no longer would work together on this matter. Michael Ritigstein was discharged as counsel via an e-mail dated January 14, 2008. See Exhibit "A."

There is no trial date currently scheduled. The discovery phase of litigation began on January 15, 2008.

II. LEGAL ANALYSIS

Michael Ritigstein should be relieved as counsel as Defendant, Don Lichterman, on his behalf and on behalf of SRG, terminated Mr. Ritigstein's services on January 14, 2008.

The Rules of Professional Conduct are clear with respect to withdrawal of counsel. As per Model Rules of Professional Conduct Rule 1.16(a)(3)(c) states, "*... a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.*"

In the matter at hand, after the settlement conference dated January 11, 2008, counsel and defendant, Don Lichterman, discussed the management and direction of the litigation. Defendant informed counsel that he had irreconcilable differences over issues arising out of the management and direction of the litigation. As a result, defendant and counsel agreed that they would not work together on this matter. Michael Ritigstein was discharged as counsel as per an e-mail dated January 14, 2008. See Exhibit "A." In the e-mail defendant indicates that he will obtain new counsel to litigate the matter and he requested that the file be returned to his office.

Additionally, in addressing motions to withdraw as counsel, district courts have typically considered whether "the prosecution of the suit is [likely to be] disrupted by the withdrawal of counsel." Brown v. National Survival Games, Inc., 1994 WL 660533, at *3 (N.D.N.Y. Nov. 18, 1994) (finding that because

"[discovery] is not complete and the case is not presently scheduled for trial. . . . granting the instant motion will not likely cause undue delay.")


In the present case, a trial date is currently not scheduled and the discovery phase of litigation recently began on January 15, 2008. Therefore, defendants will not be prejudiced as a result Mr. Ritigstein's withdrawal as counsel. Further, Mr. Ritigstein was terminated by Defendants, Don Lichterman and SRG. As such, it would be improper to continue to act on their behalf.

III. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Order be granted to relieve Michael D. Ritigstein, Esquire as counsel for defendants, Sunset Holdings, LLC (improperly captioned "Sunset Records Group, Inc.") and Don Lichterman.

LAW OFFICES OF MICHAEL D. RITIGSTEIN

BY:


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DATED: January 21, 2008

EXHIBIT “A”

Michael Ritigstein

From: DON LICHTERMAN / SUNSET RECORDS (SRG) [Don.Lichterman@SunsetRecordsGroup.com]

Sent: Monday, January 14, 2008 3:42 PM

To: mritigstein@ritigsteinlaw.com

Subject: Re: Litigation w/ Disco Biscuits

[REDACTED]

[REDACTED] That will then give me the time to handle getting new council to handle this case.

[REDACTED] I will have you deliver all paperwork related to this case to one of my offices.